

**PROPOSED AMENDMENTS TO LEGAL SPECIALIZATION RULES AND
STANDARDS IN APPELLATE LAW AND PERSONAL AND SMALL BUSINESS BANKRUPTCY LAW**

RULES: SECTION 14.3

Explanation (*excerpted from Board Committee on Member Oversight agenda item*): Section 14.3 of the Rules provides for suspension of certification only when the specialist has been subject to final disciplinary action. However, there are a number of non-disciplinary actions that cause an attorney to be placed on "Not Entitled" status, i.e., the attorney may not practice law in California. Examples are felony convictions, which result in interim suspension, failure to pay bar dues, failure to comply with the MCLE requirement, B&P Code section 6007 matters (an attorney has been ordered inactive, e.g., due to mental incompetence, or causing substantial harm to his/her clients or the public), and failure to pay child support.

While a certified specialist on Not Entitled status is effectively removed from the practice of law and, presumably, from holding him or herself out as a certified specialist, the BLS cannot under the current Rules suspend or revoke the attorney's certification based on non-disciplinary actions. Procedurally, this results in the attorney remaining on the role of certified specialists and the attorney's file remaining open until he or she fails to comply with one of the program requirements, such as applying for recertification or paying the annual specialist fee. The proposed change to section 14.3 as set forth in attachment 1-a will give the BLS authority to take a more proactive role by immediately suspending an attorney who has been subject to non-disciplinary regulatory action that results in the attorney being prohibited from practicing law and, if appropriate, revoking the attorney's certification.

Proposed Amendments:

14.0 Suspension and Revocation of Certification

Certification or recertification may be suspended or revoked for any of the following reasons:

- 14.1** The certificate was issued contrary to these Rules or the Rules and Regulations of the State Bar of California;
- 14.2** The certified specialist made a material false representation or misstatement of material fact to the Board;
- 14.3** The certified specialist has been subject to final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline;
- 14.4** The certified specialist has been subject to non-disciplinary regulatory action by the State Bar, or any body authorized to impose such action, that results in the certified specialist being prohibited from practicing law or from holding himself or herself out as a lawyer;
- 14.45** The certified specialist has failed to pay any fee set by the Board of Governors of the State Bar, including all fees assessed pursuant to these Rules; or
- 14.56** The program for certification in that field is terminated.

RULES: SECTION 22.1

Explanation (*excerpted from Board Committee on Member Oversight agenda item*): Section 22.1 of the Rules describes the composition of the Board of Legal Specialization (BLS), which is composed of 18 members, including six of the eight Advisory Commission chairs, who are appointed as voting members on a rotating basis. The BLS is recommending that section 22.1 be revised . . . to give all Commission chairs voting rights in order to encourage the chairs' full participation in BLS meetings and insure that all specialties are represented.

Proposed Amendments:

22.0 Board of Legal Specialization

22.1 Composition

The California Board of Legal Specialization shall be established and shall be composed of ~~48~~ 20 members, including the Chair, Vice-Chair, and one advisor. The members shall be appointed by the Board of Governors and shall consist of at least three (3) non-lawyers. In addition, the chairs of ~~six~~ of the Advisory Commissions shall be appointed as voting members ~~on a rotating basis~~.

RULES: SECTION 23.1

Explanation (*excerpted from Board Committee on Member Oversight agenda item*): Section 23.1 of the Rules refers to the confidentiality of applications for certification and recertification. In cases of denial of certification or recertification, the applicant is entitled to a hearing before the State Bar Court, at which the BLS is represented by the Office of Trial Counsel (OTC). In order to prepare for the State Bar Court hearing, the OTC will request that all information relating to the application be released to them. Under section 23.1 as currently written, information relating to applications may not be released except upon prior order of the Board of Governors. This puts the BLS in the position of having to ask the Board of Governors for permission to release applicant information to its own counsel.

Because section 15.5 of the Rules requires that a hearing take place in 110 days from the date of receipt of a request from an applicant, this can also result in the administrative burden of having to arrange for an emergency Board item in order for the OTC to receive the materials in time to prepare for the hearing. The proposed change to section 23.1 . . . allows for release of information relating to an application to counsel appointed under section 15.7 of the Rules without prior approval of the Board.

Proposed Amendment:

23.0 Confidentiality

23.1 Application

All information relating to an application is confidential, including the contents of the application form, documents, records, communications, other papers, and statements of references related to an application, except to appointed counsel as referenced in section 15.7* of these Rules or upon prior order of the Board of Governors. The information is the property of the State Bar of California and shall not be disclosed to anyone, including the applicant, except that an applicant may be informed as to the status of his or her application at any time. Nothing in this section shall be construed as prohibiting the disclosure of information of alleged professional misconduct to the Office of Investigation, Office of Trial Counsel, or other appropriate disciplinary body of the State Bar.

(*Section 15.7 provides that "The Board shall be represented by the Office of the Chief Trial Counsel or such other person as the Board may designate.")

APPELLATE LAW STANDARDS

Explanation (*excerpted from Board Committee on Member Oversight agenda item*): Revisions to the education standards for certification and recertification in the Appellate Law Standards were approved by the Board in July 2002, effective January 1, 2003. After the revised requirements were made available to certified appellate law specialists, applicants, and providers of education in appellate law, it became apparent from the questions directed to staff that the cap on education in trial procedure was too limiting and confusing. The Appellate Law Advisory Commission revisited the requirements and determined to remove the cap in order to give specialists and applicants more flexibility in complying with the education requirement.

Proposed Amendments:

3.0 Educational Requirement for Certification

An applicant must show that, within the three (3) years immediately preceding application, he or she has completed not less than forty-five (45) hours of approved educational activities as follows:

- 3.1 Not less than twenty (20) of the required hours must be in appeals and writs;
- 3.2 The remaining hours may be in any combination of pre-trial, trial, or post-trial practice and procedure, or substantive law topics, ~~but no more than fifteen (15) hours may be in pre-trial, trial, or post-trial practice and procedure.~~

For purposes of this section, approved educational activities may include educational activities approved for either MCLE or legal specialist credit.

5.0 Educational Requirement for Recertification

An applicant for recertification must show that, during the current five (5) year certification period, he or she has completed not less than sixty (60) hours of approved educational activities as follows:

- 5.1 Not less than twenty-five (25) of the required hours must be in appeals and writs;
- 5.2 The remaining hours may be in any combination of pre-trial, trial, or post-trial practice and procedure, or substantive law topics, ~~but no more than twenty-five (25) hours may be in pre-trial, trial, or post-trial practice and procedure.~~

For purposes of this section, approved educational activities may include educational activities approved for either MCLE or legal specialist credit.

PERSONAL AND SMALL BUSINESS BANKRUPTCY LAW STANDARDS

Explanation (*excerpted from Board Committee on Member Oversight agenda item*): In 1993, the Board of Governors approved the creation of a specialty in Personal and Small Business Bankruptcy Law. The Advisory Commission for the specialty area believes that the Standards as currently written, which include only chapter 7 of the Bankruptcy Code when referring to corporate or partnership debtors, [erroneously] suggest that certified personal and small business bankruptcy specialists are not capable of handling other than small business matters. . . . The Commission believes that this discourages bankruptcy specialists who handle chapter 11 matters from seeking certification. It should be noted that the written exam that attorneys must pass in order to be certified covers both chapter 7 and chapter 11 issues.

It has also been the Commission's experience that the current specialty name is awkward and not particularly descriptive in that consumers looking for help with bankruptcy matters are looking for the word "bankruptcy," which tends to get lost in the current name of the specialty, especially if listed alphabetically.

The Commission feels strongly, and the BLS agrees, that, in order to make it easier for consumers to find certified specialists in bankruptcy law and encourage more bankruptcy specialists to seek certification, the Standards should be revised . . . to redefine the specialty by adding a reference to chapter 11 when referring to corporate or partnership debtors and rename the specialty Bankruptcy Law.

Proposed Amendments:

The Standards for Certification and Recertification in ~~Personal and Small Business~~ Bankruptcy Law

1.0 Definition

~~Personal and small business~~ Bankruptcy law is the practice of law under the United States Bankruptcy Code (11 U.S.C. §101, et seq.) ("Code"). It includes, but is not limited to, representation of: (1) individual debtors under chapter 7, 11 or ~~chapter~~ 13 of the Code, whether or not engaged in business; (2) corporate or partnership debtors under chapter 7 or 11 of the Code; (3) creditors of such debtors; (4) trustees who serve in bankruptcy cases concerning such debtors; (5) all other interested parties in bankruptcy cases.

2.0 Task Requirement for Certification

An applicant must demonstrate that, within the five (5) years immediately preceding the initial application, he or she has been substantially involved in the practice of ~~personal and small business~~ bankruptcy law. Substantial involvement in the area of ~~personal and small business~~ bankruptcy law would be shown if he or she had principal responsibility for representation of, and has personally appeared on behalf of, a client or clients in 100 or more chapter 7, 11 or 13 bankruptcy cases under the Code.

3.0 Educational Requirement for Certification

An applicant must show that, within the three (3) years immediately preceding the application for certification, he or she has completed not less than forty-five (45) hours of approved educational activities relevant to ~~personal and small business~~ bankruptcy law.

4.0 Independent Inquiry and Review Requirement for Certification

4.1 An applicant shall submit the names and mailing addresses of the following:

4.1.1 Three (3) lawyers who practice in the same geographic area as the applicant, and one (1) judge of the United States Bankruptcy Court or District Court, chosen by the applicant before whom the applicant has

appeared as an advocate in bankruptcy proceedings within the five (5) years immediately preceding application; and

4.1.2 Two (2) different opposing counsel in two (2) contested or adversary proceedings conducted by the applicant within the five (5) years immediately preceding application, if any; and

4.1.3 One (1) bankruptcy trustee whom the applicant has represented in a bankruptcy proceeding within the five (5) years immediately preceding the application; or one (1) bankruptcy trustee or one (1) trustee's attorney in a case in which the applicant represented the debtor within the five (5) years immediately preceding application.

4.2 The Commission may select from among the names of judges and lawyers who practice or preside in the same geographical area as the applicant for further evaluation of the applicant's proficiency in the practice of bankruptcy law.

4.3 References may be asked to submit the names of additional references familiar with the applicant's proficiency.

5.0 Task Requirement for Recertification

An applicant for recertification must show that during the current five (5) year certification period he or she has had direct and substantial participation in the practice of ~~personal and small business~~ bankruptcy law. Such showing shall be made by compliance with the requirements set forth in section 2.0 or, at the discretion of the Commission, by sworn statement that the applicant has engaged in the practice of ~~personal and small business~~ bankruptcy law substantially to the same extent as described in the application for original certification.

6.0 Educational Requirement for Recertification

An applicant for recertification must show that during the current five (5) year certification period he or she has completed not less than sixty (60) hours of approved educational activities relevant to ~~personal and small business~~ bankruptcy law specialists.

7.0 Independent Inquiry and Review Requirement for Recertification

An applicant for recertification shall demonstrate proficiency in ~~personal and small business~~ bankruptcy law through independent inquiry and review in the same manner as set forth in section 4.0 for certification.